

AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

WAC 173-532-010 Authority and purpose. (1) This ~~((regulation))~~ chapter is adopted in accordance with the Watershed Planning Act (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Regulation of public ground waters (chapter 90.44 RCW), Water code (chapter 90.03 RCW), and the water resources management regulation, chapter 173-500 WAC, which was ((promulgated)) adopted under the authority of the Water Resources Act of 1971, chapter 90.54 RCW.

(2) This chapter ~~((, including any amendments,))~~ applies to the management of all waters ((that lie)) within ((or contribute to)) the Walla Walla River drainage basin located in Washington state.

~~((This chapter sets forth the department's policies to manage the basin's water resources.))~~ (3) This chapter shall not affect existing water rights, unless otherwise provided for in the conditions of the water right in question. It shall also not affect federal Indian and non-Indian reserved rights.

(4) The department shall initiate a review of this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Order DE 77-30, § 173-532-010, filed 12/14/77.]

AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

WAC 173-532-020 Definitions. For purposes of this chapter, the following definitions shall be used.

(1) "Allocation" means the designating of specific amounts of the water resource for specific beneficial uses.

(2) ~~((("Base flow" means a level of stream flow established in accordance with provisions of chapter 90.54 RCW required in~~

~~perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values.))~~ "Appropriation" means the process of legally acquiring the right to specific amounts of the public water resource for application to beneficial uses.

(3) "Consumptive use" means use of water whereby there is ~~((discernible))~~ diminishment of the water source.

(4) "Department" means the Washington state department of ecology.

(5) "Director" means the director of the department of ecology.

(6) "Domestic use" means use of water associated with human health and welfare requirements, including water used for drinking, bathing, sanitary purposes, cooking, laundering, ~~((irrigation of not over one-half acre of lawn and garden per dwelling,))~~ and other incidental household uses. Irrigation of lawn and garden under the permit exemption in RCW 90.44.050 shall not exceed one-half acre.

(7) ~~((("In-house domestic use" means use of water for drinking, cleaning, sanitation, and other uses in a residence, excluding irrigation of lawn and garden.))~~ "Environmental enhancement project" means a water storage project, above or below ground, that would provide net environmental benefits, with particular emphasis on enhancing salmonids production. Projects that enhance instream flows directly or indirectly qualify under the definition. Projects proposed as mitigation for new consumptive water rights do not qualify under this definition.

(8) "Gravel aquifer" means any geologic formation generally under unconfined, or water table, conditions which consist of sand and gravel and may contain interbedded layers of silt and clay.

(9) "Instream flow" means a level of stream flow, established under chapters 90.54, 90.03, 90.22, and 90.82 RCW, required in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values. The term means "base flow" under chapter 90.54 RCW, a "minimum flow" under chapters 90.03 and 90.22 RCW, and "minimum instream flow" under chapter 90.82 RCW. In the Walla Walla Watershed Plan, adopted in June 2005 by Walla Walla and Columbia counties, the term "new appropriation flows" has the same meaning as instream flows under this chapter.

(10) "Municipal water ~~((supply system))~~ supplier" ~~((means a set of facilities including source, treatment, storage, transmission and distribution facilities whereby water is furnished for commercial and/or industrial uses, and public water supplies with 10 or more connections))~~ and "municipal water supply purposes" are defined in RCW 90.03.015.

~~((+9))~~ (11) "Nonconsumptive use" means a type of water use where either there is no diversion or withdrawal from a source ~~((body))~~, or where there is no ~~((discernible))~~ diminishment of the source.

~~((+10))~~ (12) "Perennial stream" means a stream ~~((with a natural flow which is normally continuous at any given location))~~ that normally flows year-round.

~~((11) "Public water supply" means any water supply intended or used for human consumption and community uses.~~

~~((12))~~ (13) "Planning unit" means the Walla Walla watershed planning unit, established under chapter 90.82 RCW, and all successors, formally designated by the Walla Walla watershed planning initiating governments. The initiating governments are Columbia and Walla Walla counties, city of Walla Walla, and Gardena Farms Irrigation District No. 13.

(14) "Water right" means a right to make beneficial use of public waters of the state, including any water right established for instream flow purposes.

~~((13) "Zone of direct hydraulic continuity" means that zone of inter action between the surface water stream and the adjacent ground water whereby a pumping well can effectively reduce the flow in the stream to the detriment of surface water users, as determined by the department.))~~ (15) "Withdrawal" means the extraction or use of ground water, or the diversion or use of surface water.

[Order DE 77-30, § 173-532-020, filed 12/14/77.]

NEW SECTION

WAC 173-532-025 Establishment of stream management units.
The department hereby establishes the following stream management units (Table I). The boundaries of the management units are shown in WAC 173-532-120.

| Table I Stream Management Unit Information | | |
|--|---|---|
| Stream Management Unit Name; Management Point (MP) No.; Control Station Gage No. | Control Station by River Mile (RM); Section; Township and Range; Latitude (Lat.) and Longitude (Long.) | Stream Management Reach Description |
| Mill Creek MP 1 (Mill Creek at Kooskooskie) USGS Gage No. 14013000 | RM 21.2; Section 12; T6N, R37E; 46°00.0'N, 118°07.1'W | Mill Creek at confluence with Walla Walla River (Walla Walla River, RM 33) to state line headwaters at Mill Creek, including tributaries. |

| Stream Management Unit Name; Management Point (MP) No.; Control Station Gage No. | Control Station by River Mile (RM); Section; Township and Range; Latitude (Lat.) and Longitude (Long.) | Stream Management Reach Description |
|--|---|---|
| Walla Walla River MP 5a (Walla Walla River at Detour Road) Department Gage No. 32A100 | RM 32.4; Section 31; T7N, R35E; 46°2.6'N, 118°29.4'W | Walla Walla River, RM 32.4 (below confluence of Walla Walla River and Mill Creek) to state line at Walla Walla, including tributaries. |
| North Fork Touchet River MP 6a (North Fork Touchet above Dayton) Department Gage No. 32E050 | RM 54.9; Section 32; T10N, R39E; 46°17.9'N, 117°57.2'W | Mouth of North Fork Touchet River to headwaters, including tributaries. |
| Touchet River MP 11 (Touchet River at Bolles) Department Gage No. 32B100 | RM 40.1; Section 7; T9N, R37E; 46°16.4'N, 118°13.3'W | Touchet River, RM 40.1 to RM 54.9 (confluence of North Fork Touchet River and South Fork Touchet River), including tributaries, excluding North Fork Touchet River and its tributaries. |

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AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

WAC 173-532-030 ((Base)) Establishment of instream flows.
~~((The establishment of base flows for surface streams will be deferred until such time as storage project or projects become a reality. At present, all surface streams are totally appropriated during the irrigation season and water is not available for protection of instream values. With the advent of future storage projects, the department may establish base flows which can be included as project benefits and maintained by storage releases.))~~
(1) The instream flows established in this chapter are based on the recommendations of the planning unit; consultation with the departments of fish and wildlife, agriculture, and community, trade, and economic development; the Confederated Tribes of the Umatilla Indian Reservation; and public input received during the rule-making process.
(2) Instream flows established here are water rights, which protect stream flows from future consumptive appropriations. In

accordance with RCW 90.82.080 (2)(a), the planning unit determined by unanimous vote that the priority date of the instream flows is the effective date of this chapter.

(3) Instream flows are to be protected from impairment by junior water rights and by all future changes and transfers of senior and junior water rights.

(4) Instream flows, expressed in cubic feet per second (cfs), are measured at the management points identified in WAC 173-532-025. For reaches that do not have management points, the flows established for the nearest management point or points (where a tributary with a management point contributes to such flow) apply to those reaches.

(5) Instream flows are established for the stream management units in WAC 173-532-025, as indicated in Table II.

Table II
Instream Flows in the Walla Walla River Basin
(cubic feet per second)
Stream Management Unit

| <u>Month</u> | <u>Mill Creek MP 1 (Mill Creek at Kooskooskie), USGS Gage No. 14013000</u> | <u>Walla Walla River MP 5a (Walla Walla River at Detour Road), Department Gage No. 32A100</u> | <u>North Fork Touchet River, MP 6a (North Fork Touchet above Dayton), Department Gage No. 32E050</u> | <u>Touchet River MP 11 (Touchet River at Bolles), Department Gage No. 32B100</u> |
|------------------|--|---|--|--|
| <u>January</u> | <u>110</u> | <u>250</u> | <u>95</u> | <u>150</u> |
| <u>February</u> | <u>125</u> | <u>250</u> | <u>95</u> | <u>150</u> |
| <u>March</u> | <u>150</u> | <u>350</u> | <u>125</u> | <u>200</u> |
| <u>April</u> | <u>150</u> | <u>350</u> | <u>125</u> | <u>200</u> |
| <u>May</u> | <u>125</u> | <u>250</u> | <u>125 Closure</u> | <u>200 Closure</u> |
| <u>June</u> | <u>100 Closure</u> | <u>Closure</u> | <u>95 Closure</u> | <u>125 Closure</u> |
| <u>July</u> | <u>53 Closure</u> | <u>Closure</u> | <u>65 Closure</u> | <u>74 Closure</u> |
| <u>August</u> | <u>41 Closure</u> | <u>Closure</u> | <u>53 Closure</u> | <u>48 Closure</u> |
| <u>September</u> | <u>41 Closure</u> | <u>Closure</u> | <u>51 Closure</u> | <u>56 Closure</u> |
| <u>October</u> | <u>48 Closure</u> | <u>Closure</u> | <u>63 Closure</u> | <u>82 Closure</u> |
| <u>November</u> | <u>100 Closure</u> | <u>Closure</u> | <u>95 Closure</u> | <u>150 Closure</u> |
| <u>December</u> | <u>110</u> | <u>250</u> | <u>95</u> | <u>150</u> |

[Order DE 77-30, § 173-532-030, filed 12/14/77.]

AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

WAC 173-532-040 ((Streams)) Surface and ground water closed to further consumptive appropriations. ((The department has determined that no waters are available for consumptive appropriation through the establishment of water rights for the following streams for the periods indicated:

TABLE II-1
SURFACE WATER CLOSURES*

| STREAM NAME | AFFECTED REACH | EFFECTIVE DATE OF CLOSURE | PERIOD OF CLOSURE |
|-------------------|---------------------|---------------------------|--|
| Blue Creek | Mouth to Headwaters | Date of Adoption | June 1 -- Oct. 31 |
| Mill Creek | Mouth to State Line | 2-6-1957 | May 1 -- Oct. 1 |
| Walla Walla River | Mouth to State Line | Date of Adoption | May 1 -- Nov. 30 |
| Dry Creek | Mouth to Headwaters | Date of Adoption | April 15 -- Nov. 15 or whenever Walla Walla at USGS Gage 14.0185 drops below 91.0 cfs. |
| Touchet River | Mouth to Headwaters | Date of Adoption | June 1 -- Oct. 31 |
| Coppei Creek | Mouth to Headwaters | Date of Adoption | April 1 -- Nov. 10 |
| Doan Creek | Mouth to Headwaters | Date of Adoption | June 1 -- Oct. 1 |
| Mud Creek | Mouth to Headwaters | Date of Adoption | May 1 -- Oct. 31 or whenever Walla Walla below confluence with Mud Creek falls below 50 cfs. |
| Pine Creek | Mouth to Headwaters | Date of Adoption | May 1 -- Oct. 31 or whenever Walla Walla River at confluence with Pine Creek or below Touchet River drops below 50 cfs. |
| Stone Creek | Mouth to Headwaters | Date of Adoption | May 1 -- Oct. 31 |

*Exception for single domestic and stock water where no other practical source is available.))

(1) Based on historical and current low flows and water withdrawals by existing water right holders, the department has determined that no waters are available for new consumptive uses during periods of low surface water flows. Therefore, all rivers and streams in the basin are seasonally closed to any further consumptive appropriation from May 1 to November 30 with the exception that the Walla Walla River and all of its tributaries between Stateline and Detour Road at MP 5a, and Mill Creek and all of its tributaries from the confluence with the Walla Walla to the

headwaters shall be closed from June 1 to November 30.

(2) Based on the hydrogeology of the basin, the department finds that gravel aquifers in the basin are hydraulically connected to surface waters in the basin. Therefore, the gravel aquifers are closed. Exception to this closure is provided for future permit-exempt ground water withdrawals as prescribed in WAC 173-532-050 and for nonconsumptive ground water use as prescribed in WAC 173-532-045. The closure does not affect the construction of a replacement well or new additional well or wells consistent with the conditions set in RCW 90.44.100 (2) and (3).

(3) Future permits to withdraw surface water during nonclosure periods, shall be limited to environmental enhancement projects as described in WAC 173-532-055.

[Order DE 77-30, § 173-532-040, filed 12/14/77.]

NEW SECTION

WAC 173-532-045 Future permitting actions. Surface and ground water permits may be issued if either condition in subsection (1), (2), or (3) of this section applies.

(1) The proposed water use is nonconsumptive.

(2) The proposed ground water use from the basalt aquifer will not:

(a) Impair existing water rights;

(b) Affect any closed surface source where instream flows have not been established; or

(c) Affect any closed gravel aquifer.

(3) The proposed surface water use would occur during nonclosure periods and is intended for an environmental enhancement project, as defined in WAC 173-532-020(6) and meeting the criteria listed in WAC 173-532-055.

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AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

WAC 173-532-050 Protection of surface water rights from ((new appropriators of ground water)) future permit-exempt ground water appropriations from the gravel aquifer. ((New appropriators of ground water will be required to locate wells outside of the zone of direct hydraulic continuity between the surface water stream and the ground water aquifer. The actual limits of the zone of direct hydraulic continuity at a specific location will be determined by the department after an individual ground water application is received. The department will use accepted engineering methods for its determination.)) (1) In exception to the closure in WAC 173-532-040, future appropriation from the gravel aquifers under the permit exemption in RCW 90.44.050 may be allowed, under the following conditions:

(a) Where connections to an existing municipal water supply cannot be provided to the residences or development in a timely and reasonable manner in areas with a zoned density equal to or more dense than one residence per ten acres (high density areas); then the total amount of water that may be withdrawn from the gravel aquifer for domestic uses and irrigation of one-half acre of lawn and garden shall not exceed the amounts specified in (a)(i) and (ii) of this subsection. This condition does not apply to the Burbank area that drains to the Snake and Columbia rivers.

(i) For any one residence, one thousand two hundred fifty gallons a day.

(ii) For multiple residences that are part of a group use in addition to the limitations in (a)(i) of this subsection, the combined maximum water withdrawal for the development shall not exceed five thousand gallons per day.

(b) If the source of withdrawal is in the gravel aquifer in either the Burbank area or areas where the zoned density is less than one residence per ten acres, future permit-exempt ground water withdrawals for single or group domestic uses, watering of a lawn or noncommercial garden, or for industrial purposes, must be consistent with the requirements set in RCW 90.44.050.

(c) For stockwatering, water use from an exempt well in the gravel aquifer may not exceed: Seven hundred gallons per day on a tax parcel size of ten acres or less, two thousand five hundred gallons per day on a tax parcel size between ten and twenty acres or five thousand gallons per day on a tax parcel size twenty acres and greater. This exception shall not apply to feedlots or other activities not related to normal grazing land uses.

(d) All future appropriation in the high density areas, including for stockwatering, shall be required to install and maintain a water measuring device (water source meters) meeting specifications provided by the department. The user must report to

the department, by December 31 of each year, monthly water use from May 1 to November 30.

(2) With limited water availability, closure of surface sources and the gravel aquifer to any future consumptive uses, and ongoing regulation of existing adjudicated rights, new permit-exempt withdrawals from the gravel aquifer are likely to have cumulative impacts on existing water rights, including instream flows and the closed water sources. Therefore, new permit-exempt users from the gravel aquifer in the high density areas must provide water-for-water mitigation for any outdoor water use, from May 1 to November 30, prior to such use unless the department specifies otherwise.

(3) The department will keep records of all future permit-exempt ground water appropriations from the gravel and basalt aquifers.

(4) In consultation with Walla Walla and Columbia counties, the planning unit and the Confederated Tribes of the Umatilla Indian Reservation, the department will identify means, such as the use of the trust water right program under chapter 90.42 RCW, to assist future permit-exempt users to offset the impacts of their proposed water use, either individually or jointly.

(5) If the department determines, in consultation with Walla Walla and Columbia counties, the planning unit and the Confederated Tribes of the Umatilla Indian Reservation, that the impacts of outdoor water use from new permit-exempt wells in the gravel aquifer are not fully mitigated and may impair existing rights, the department shall issue an order and public notice stopping all such use. The order and notice shall define the area for which the stoppage applies. The order shall continue until such time that adequate and reliable mitigation is in place.

[Order DE 77-30, § 173-532-050, filed 12/14/77.]

NEW SECTION

WAC 173-532-055 Future surface water withdrawals for environmental enhancement projects. The department finds there may be water available above existing water rights and instream flows that could be captured for environmental enhancement projects. This water is only available at specific locations where instream flows are established and during the nonclosure periods, as specified in Table III. A surface water withdrawal for an environmental enhancement project ("EEP") may be approved if it

meets all of the following:

(1) EEP may be sponsored only by:

(a) The Confederated Tribes of the Umatilla Indian Reservation;

(b) A municipal governments located within Walla Walla or Columbia counties;

(c) An irrigation district or ditch company within the watershed;

(d) The Washington department of fish and wildlife;

(e) A conservation district within the watershed;

(f) A quasi-governmental organization within the watershed; or

(g) A nonprofit organization within the watershed.

(h) Individual landowners may qualify as a sponsor only when the said landowner is a participant in a project sponsored by one or more of the aforementioned qualifying sponsors.

(2) A proposed project may only qualify as an EEP after the project has received a consensus recommendation from the Confederated Tribes of the Umatilla Indian Reservation, the Planning Unit, Washington department of fish and wildlife, and planning unit initiating governments.

(a) The consensus recommendation shall occur after receiving technical advice and recommendations from the technical advisory group with representatives from:

(i) The Confederated Tribes of the Umatilla Indian Reservation;

(ii) The governor's salmon recovery office;

(iii) The Walla Walla basin watershed council;

(iv) The Washington department of fish and wildlife; and

(v) The department of ecology.

(vi) The United States Army Corps of Engineers, United States Forest Service, United States Fish and Wildlife Service, and National Marine Fisheries Service may be invited to participate in the technical review.

(b) Technical evaluation shall consider:

(i) The specific management objectives for the stream management reaches affected by the EEP;

(ii) Effects of the project on inward and outward migration of salmonids and ecological function provided by high stream flows; and

(iii) Cumulative effects of all environmental enhancement projects.

(c) The technical evaluation shall also weigh any detriment caused by storing some seasonal stream flows (e.g., high winter flows and flood flows) against any benefit the stored water would provide.

(3) An application for EEP must include a monitoring and adaptive management program and show ability to implement such a program. Applicants will define how they will measure and evaluate the project's effectiveness in achieving environmental enhancement goals. The technical advisory group may assist in developing the criteria for evaluating project effectiveness.

(4) Initial water use authorization for EEP will be for short-

term. No appropriative right shall develop out of this authorization. The department may only issue a permanent water right if the project's intended benefits are being realized, on the advice of the technical group.

(5) All other applicable permits must be obtained from the department, Washington department of fish and wildlife, and other agencies, prior to construction or water use.

(6) Water right permits for EEP shall be subject to existing water rights and instream flows as established under this chapter.

(7) In consideration of the recommendations of the technical advisory group, the withdrawals shall be managed consistent with salmonid migration needs and with the protection of high flow functions.

(8) Monitoring and sampling shall be consistent with the monitoring plan developed and approved for the project. Daily records shall be kept of the quantity of water diverted to the project. Such records shall be made available to the department upon request.

(9) The department will maintain a record of all diversion for EEP approved in each stream management unit.

(10) The maximum allowable allocation for EEP within a stream management unit shall not exceed the values indicated in Table III.

Table III
Maximum Allowable Allocation for Environmental
Enhancement Projects
(cubic feet per second)

| Stream Location | EEP Diversion Period | Maximum Allowable Allocation* |
|---|-----------------------------|--------------------------------------|
| Mill Creek at confluence with Walla Walla River (Walla Walla River, RM 33) to headwaters. | Dec. 1 to May 31 | 125 |
| Walla Walla River below confluence of Walla Walla River and Mill Creek (RM 32.4) to state line. | Dec. 1 to May 31 | 300 |
| North Fork Touchet at mouth of North Fork Touchet River to headwaters. | Dec. 1 to April 30 | 110 |

| Stream Location | EEP Diversion Period | Maximum Allowable Allocation* |
|--|-----------------------------|--------------------------------------|
| Touchet River at Bolles to headwaters, excluding North Fork Touchet. | Dec. 1 to April 30 | 175 |

*The total allowable allocation on the Touchet River and North Fork Touchet River shall not exceed 175 cfs. The total maximum allocation on the Walla Walla River and Mill Creek shall not exceed 300 cfs. Due to concerns over potential impacts on inward and outward migration of salmonids and ecological function of high flows the maximum allowable allocation may be considerably less.

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AMENDATORY SECTION (Amending Order 88-11, filed 6/9/88)

WAC 173-532-090 Compliance and enforcement. (~~((In enforcement of this chapter, the department of ecology may impose such sanctions as are appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.))~~) (1) The department shall prepare and make available to the public, technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws and rules.

(2) When the department determines that a violation of this chapter has occurred, it shall:

(a) First attempt to achieve voluntary compliance, except in appropriate cases involving potential harm to other water rights or the environment. An approach to achieving voluntary compliance is to offer information and technical assistance to a violator. The information or technical assistance identifies, in writing, one or more means to accomplish the person's purposes within the framework of the law.

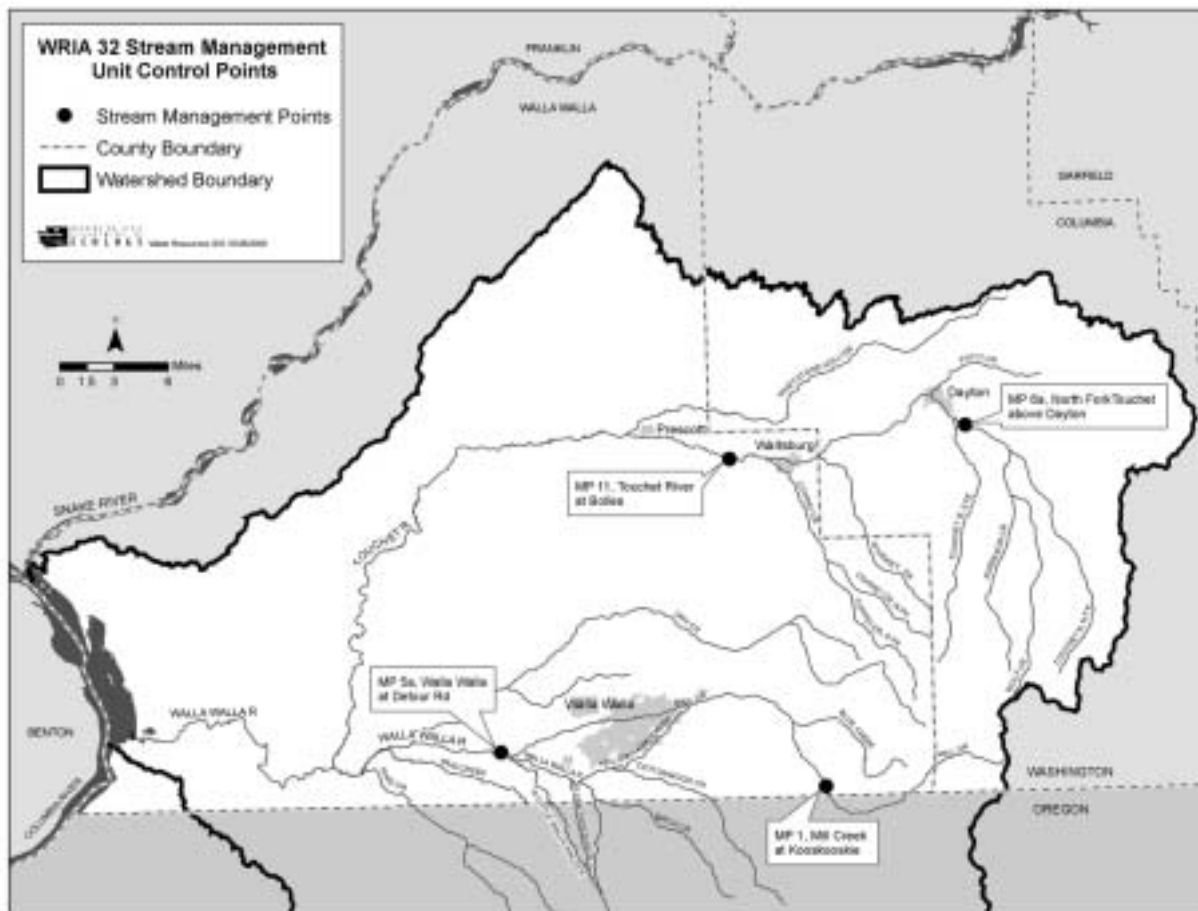
(b) If education and technical assistance do not achieve compliance, the department has the authority to issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 43.83B.336, 90.03.400, 90.03.410,

90.03.600, 90.44.120 and 90.44.130.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-532-090, filed 6/9/88.]

NEW SECTION

WAC 173-532-120 Map. For the purpose of administering this chapter, the boundaries of the Walla Walla River basin identified in the figure below are presumed to accurately reflect the basin located within Washington state.



REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|-----------------|---|
| WAC 173-532-060 | Designation of ground water areas for specific uses. |
| WAC 173-532-070 | Closure of ground water aquifer to further appropriation. |
| WAC 173-532-080 | Evaluation of ground water applications. |
| WAC 173-532-110 | Regulation review. |